

EMERGENCY REGULATION

The Department will file this emergency regulation for the October 28, 2005 State Register. It will be effective on filing. The regulation will cover the interim period while the proposed regulation is going through the commenting process and General Assembly approval. The regulation is only valid for 90 days on filing, then an additional 90 days after refilling. *(Regulation subject to change until filing)*

DEPARTMENT OF CONSUMER AFFAIRS

CHAPTER 28

Statutory Authority: 1976 Code Section 37-7-101 et seq.
Particularly Sections 37-7-112 and 37-7-121

28-700. Fees and Charges of Consumer Credit Counseling Organization Licensees

Emergency Situation:

The General Assembly passed legislation in 2005 requiring the licensing of credit counseling organizations and credit counselors. These organizations and counselors provide credit counseling services to consumers, which include: distributing funds to creditors; offering to improve credit scores, histories, or ratings; and/ or negotiating with creditors to reduce a consumer's obligations. The statute, under S.C. Code Section 37-7-112, requires the Department to set the fees a credit counseling organization can charge a consumer.

The Department of Consumer Affairs has found that an emergency exists requiring promulgation of a regulation pursuant to S.C. Code Sections 37-7-112 and 37-7-121 to set fees credit counseling organizations may charge consumers. The regulation is needed to implement fees licensees may charge consumers during the interim period between the effective date of S.C. Code Section 37-7-101 et seq., December 2, 2005, and passage of the proposed regulation by the General Assembly.

Text:

A. Definitions.

1. Definitions shall be those contained in the Consumer Credit Counseling Act, S.C. Code Ann. Section 37-7-101 et. seq. and the following:

- a. "Fees and charges of licensees" means the amount of money the credit counseling organization licensee may charge to the consumer.

B. Fees and Charges of Licensees.

1. A licensee may not charge or receive from a consumer, directly or indirectly, a fee except the following:

- a. an initial consultation fee, not to exceed twenty dollars for each consumer;
- b. if the consumer enrolls in a DMP, a set-up fee, not to exceed thirty dollars;
- c. additional maintenance fees, not to exceed twenty-five dollars for each month;
- d. a reinstatement fee, not to exceed twenty-five dollars;
- e. a bankruptcy consultation fee, if applicable, not to exceed fifty dollars for each consumer.

2. The fees set out in (B)(1) above will be adjusted based on the Consumer Price Index as referenced in S.C. Code Section 37-7-109.

C. Records and account systems maintained in whole or in part by electronic data processing may be used in lieu of the books, files and records required by S.C. Code Sections 37-7-111 and 37-7-114 if they contain equivalent information and such information is accessible to the Department.

PROPOSED REGULATION

This is the proposed regulation the Department will file for the October 28, 2005 State Register. The "**Text**" is identical to the emergency regulation above.
(*Regulation subject to change until filing*)

Document No.
DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 28
Statutory Authority: 1976 Code Section 37-7-101 et seq.
Particularly Sections 37-7-112 and 37-7-121

28-700. Fees and Charges of Consumer Credit Counseling Organization Licensees

Preamble:

The Department proposes to add Regulation 28-700. The General Assembly passed legislation in 2005 requiring the licensing of credit counseling organizations and credit counselors. These organizations and counselors provide credit counseling services to consumers, which include: distributing funds to creditors; offering to improve credit scores, histories, or ratings; and/ or negotiating with creditors to reduce a consumer's obligations. The statute, under 1976 Code Section 37-7-112, requires the Department to set the fees a credit counseling organization can charge a consumer.

The proposed regulation states the fees credit counseling organizations licensed under 1976 Code Section 37-7-101 et seq. may charge the consumers. The regulation also addresses electronic record keeping.

Notice of Drafting for the proposed regulation was published in the State Register on July 22, 2005. Comments were solicited for consideration in drafting the proposed regulation.

Section-by-Section Discussion

28-700(A) Definitions

28-700(B) The Department proposes the fees that a credit counseling organization or credit counselor may charge a consumer. Fees will be adjusted via the Consumer Price Index.

28-700(C) Electronic databases are sufficient to satisfy requirements of the Consumer Credit Counseling Act under certain circumstances.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons should submit comments to Carri Grube, Program Coordinator - Consumer Credit Counseling, South Carolina Department of Consumer Affairs, P.O. Box 5757, Columbia, S.C. 29250-5757, by November 28, 2005. Should a public hearing be requested, the hearing will be held at the Commission on Consumer Affairs' meeting on December 13, 2005 at 2:00 p.m. in the Conference Room, Third Floor, 3600 Forest Drive, Columbia, S.C. 29204.

Preliminary Fiscal Impact Statement:

The Department of Consumer Affairs estimates the costs incurred by the State in complying with the proposed regulation will be approximately \$0. Licensing fees are intended to offset administrative costs to the State and are based on experience with similar industries.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: Fees and Charges of Consumer Credit Counseling Organization Licensees

Purpose: The proposed regulation will set the fees organizations licensed under 1976 Code Section 37-7-101 et seq. may charge consumers. Record keeping requirements are also included.

Legal Authority: 1976 Code Section 37-7-101 et seq., particularly Sections 37-7-112 and 37-7-121.

Plan for Implementation: Administrative.

**DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION
BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:**

The regulation is intended to set the fees organizations licensed under S.C. Code Section 37-7-101 et seq. can charge consumers. Abuse has occurred in the industries covered by the Consumer Credit Counseling Act with respect to excessive consumer fees. The intent of setting fees is to protect the consumer.

Allowing licensees to keep records via electronic database should make it easier for them to comply with the record keeping requirements of S.C. Code Section 37-7-101 et seq.

DETERMINATION OF COSTS AND BENEFITS:

Licensing fees assessed through S.C. Code Section 37-7-101 et seq. are at levels intended to offset the costs of administering the regulation.

UNCERTAINTIES OF ESTIMATES:

Estimates are based on agency experience with similar industries. Should the number of filings vary greatly, estimates could change. However, since costs to the State should be covered by the licensing fees set in S.C. Code Section 37-7-101 et seq., impact should be minimal.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: None.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: None.

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- d. a reinstatement fee, not to exceed twenty-five dollars;
- e. a bankruptcy consultation fee, if applicable, not to exceed fifty dollars for each consumer.

2. The fees will be adjusted based on the Consumer Price Index as referenced in S.C. Code Ann. Section 37-7-109.

C. Records and account systems maintained in whole or in part by electronic data processing may be used in lieu of the books, files and records required by S.C. Code Sections 37-7-111 and 37-7-114 if they contain equivalent information and such information is accessible to the Department.